

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHNNIE GALARZA,

Defendant.

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Case No. 8:08MJ233

ORDER

This matter is before the court on the government's oral motion (Doc. 18) for competency evaluation. Hearing on the oral motion was held on December 2, 2008. The government was represented by Assistant United States Attorney Doug Semisch. The defendant, who was present, was represented by Assistant Federal Public Defender, Shannon O'Connor. At the conclusion of the hearing, the court took the motion under advisement. I find the motion should be denied.

The government in this case has failed to show that there is reasonable cause to believe that Johnnie Galarza is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him, or to assist properly in his defense. 18 U.S.C. § 4241(a). In deciding this issue I considered and gave substantial weight to the statements of Galarza's defense counsel, Shannon O'Connor, and Galarza's treatment coordinator at the Nebraska-Western Iowa VA Hospital, Linda Twoney. I also note that while the record does contain evidence Galazar is suffering from identifiable mental issues, the record does not contain any information that would cause me to believe that Galarza would not have the present ability to consult with defense counsel with a reasonable degree of rational understanding and rational, as well as factual, understanding of the

proceedings. It does not follow that just because a person has been diagnosed as mentally ill, that he is therefore not competent to stand trial.

IT IS ORDERED:

1. The government's oral motion (Doc. 18) to order a competency evaluation pursuant to 18 U.S.C. § 4241(a) is denied.
2. This case will be progressed by separate order.

DATED December 17, 2008.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**